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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1957

No. 826

RAYMOND CAINE,
Appellant,
vs.
THE PEOPLE OF THE STATE OF CALIFORNIA,
Appellees.

Appeal—Criminal

APPELLANT'S PETITION FOR REHEARING OF DECISION.

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APPELLANT'S PETITION FOR REHEARING OF DECISION.

The appellant, Raymond Caine, hereby petitions the Supreme Court for a rehearing of its decision rendered on April 28, 1958, granting appellees' motion for dismissal of appeal.

The decision was based on the ground that there is no substantial federal question involved on this appeal.

We most respectfully urge that the Court has grievously erred, *and that there are unquestionably two most substantial federal questions directly involved, and that if the decision is permitted to stand, it will result in a grave miscarriage of justice.*

The two federal questions involved here are:

1. Does the Redwood City ordinance deny to appellant the equal protection of the laws by for-

bidding him to enter the city limits of Redwood City at the point where the county road of Edgewood Road reaches the Western city limits of Redwood City and to use any city street connecting with that road, where it permits other trucks of the same weight to use such city streets to or from such point on such Western city limits? Appellant was hauling from a point on the county road 1.6 miles west of the city limits.

2. Does the ordinance deprive appellant of his liberty and property without due process of law when it closes all streets connecting with the county road of Edgewood Road to appellant's trucks without designating an alternate route through the city, and is a so-called "alternate" route, most of which is outside of the city, a reasonable route where such route runs over a high and steep hill outside of the city and where the route runs through another city, viz., Woodside, and where the cost of transportation is 3 times as great as the cost via the route through the city? The distance via the route through the city is 2.7 miles, whereas the distance via Woodside is 10.45 miles.

In this case the plaintiff in error, a truck operator, hauling from a point outside of the city, is by an ordinance of Redwood City forbidden to enter or leave the city at the point where the county road of Edgewood Road reaches the city limits; but trucks of other persons which do not enter or leave the city at that point are permitted by the ordinance to use

the city streets of Redwood City right up to such point and to haul from such point in Redwood City to any other point in the city or elsewhere.

With all deference to this Court, appellant most respectfully urges that *the Court must have misunderstood the facts presented on this appeal. Never before were substantial federal questions, arising under the Fourteenth Amendment, more clearly and definitely presented to the Court for its decision.*

The right of appeal in this case is not dependent upon the *discretion* of the Supreme Court. It is only in cases where the appeal raises no substantial federal question or where it is obviously frivolous that this Court in its discretion may grant a motion to dismiss. Section 1287, 28 U.S. Code provides that final judgments or decisions rendered by the highest court of a state in which a decision could be had, may be reviewed by the Supreme Court by appeal where there is drawn in question the validity of a statute on the ground of its being repugnant to the Constitution and the decision is in favor of the validity of the statute.

If the Supreme Court had, in previous decisions, held under facts such as are here presented, that the appellant was not entitled to relief, such as was the case in *King v. Zucht,* 260 U.S. 174, referred to in Rule 15 of this Court, the decision dismissing the appeal would be correct, *but obviously the case here does not come under the doctrine of King v. Zucht, supra.*

In the appellees' brief, filed on the motion to dismiss, the appellees say "any decision adverse to the

constitutionality of the application of Section 105 (of the ordinance) to appellant under the facts in this case would be so narrow that it would not constitute a precedent of any value in determining the validity of this or similar litigation."

This statement is obviously wholly irrelevant. All that appellant is required to show here is that he is denied the equal protection of the laws or that he is deprived of his liberty or property without due process of law. This he has done.

DENIAL OF EQUAL PROTECTION OF THE LAWS.

It cannot be questioned that an ordinance which forbids certain trucks of a given weight to operate on certain city streets when at the same time the ordinance permits other trucks of the same weight to operate on the same streets, denies to the operators of the trucks first mentioned the equal protection of the laws.

With reference to the equal protection of the laws: This Court in *T. Binford v. McLeaish* (1932), 284 U.S. 598 and the Federal District Court in *McLeaish v. Binford* (1931), 52 Fed. (2d) 151 (a three-judge Federal Court) both held on facts not to be distinguished from the facts in the instant case, that the Texas statute there involved violated the equal protection of the laws provision of the Fourteenth Amendment.

The case in 284 U.S. 598 was an appeal from the decision in *McLeaish v. Binford*, 52 Fed. (2d) 151.

supra, and the decision of the District Court was affirmed.

There is no difference in principle between the Texas statute and the Redwood City ordinance here involved. In the Texas case the discrimination was based upon the difference between loads of compressed cotton and loads of other freight. But whether the vehicle was loaded with compressed cotton or other freight, its effect upon the highways was the same. *So in the instant case a truck entering the city from a county road has the same effect upon the streets of the city as any other truck of the same weight.*

So in the case of *Richter Concrete Co. v. City of Reading* (1956), 136 N.E. (2d) 422, the Supreme Court of Ohio, on facts entirely similar to the facts presented on this appeal, held that an ordinance which prohibited through traffic through the city but did not forbid trucks to enter the city if they intended to deliver their loads to points within the city, was discriminatory and rendered the ordinance void.

It appears therefore that the Supreme Court, the three-judge Federal Court and the Ohio Supreme Court have all held that statutes and ordinances similar to the ordinance here involved are violative of the equal protection of the laws provision of the Fourteenth Amendment.

Nevertheless, when such rights are asserted by the appellant herein, the Supreme Court has ruled that no substantial federal question is involved.

Appellant is by the ordinance denied the right to enter the city limits at the point where the county

road of Edgewood Road reaches the city limits, or to use any city streets connecting with the county road of Edgewood Road; but trucks of other persons which do not enter the city at that point are permitted by the ordinance to use the city streets connecting with the county road of Edgewood Road. Appellant when traveling from Redwood City to the quarry, which is 1.7 miles west of Redwood City, is denied the right to use any city street to reach the county road of Edgewood Road, but other trucks are *permitted to use such city streets if they do not leave the city at the point where the county road of Edgewood Road reaches the Western city limits.* All such trucks have the same effect upon the streets of Redwood City and upon the inhabitants of the city, *and obviously there is no valid basis for such discrimination.* (Subdivisions 1 and 2 of Division "C" of Section 105 of the ordinance and Subdivisions 1 and 2 of Division "D" of Section 105, set out at page iii of the Appendix to the Jurisdictional Statement.)

In appellant's brief on the Motion to Dismiss it is said that the exceptions contained in Subdivisions (C) and (D) of Section 105 of the ordinance "are designed to permit limited use of prohibited streets where such use is essential to the economic life and general public welfare of the community and the surrounding area."

Obviously appellant was making but a limited use of the city street of Edgewood Road. He was hauling a load of rock to a construction job at a point in the city limits just as any other truck operator would who hauled from a point in the city to a construction job

in the city. This was pointed out at page 10 of appellant's brief in opposition to the motion to dismiss.

It is also obvious that the ordinance discriminates against persons hauling into the city from the outside, and that the place from where a truck starts its trip cannot be made the basis of discrimination.

Unquestionably that is the situation presented on this appeal. That being so, we most respectfully submit, it necessarily follows that this case presents most substantial federal questions. *As to the equal protection of the laws the invalidity of the ordinance appears upon the face of the ordinance.*

DENIAL OF DUE PROCESS OF LAW.

Appellant earnestly maintains that the ordinance, both on its face and because of the undisputed facts adduced in evidence, shows that, as applied to appellant, it is arbitrary, unreasonable and capricious and deprives him of his liberty and property without due process of law. *The ordinance closes the Western entrance to the city* and makes no provision for an alternate route. In many cases in the United States, it has been held or assumed that in such a case the ordinance must provide for an alternate route *through the city* or otherwise it is unconstitutional. These cases are cited at pages 16 and 17 of the Statement as to Jurisdiction.

It was contended that appellant had an "alternate" route outside of the city. This route required the appellant *to travel west instead of east from the quarry and to traverse many miles of county roads*

and state highways outside of the city and to pass through another city, viz., Woodside.

The facts show that the route which appellant is, by the ordinance, required to travel *is most capricious, arbitrary, unreasonable and confiscatory.*

The New York Court in *Associated Transport v. City of Syracuse,* 93 N.Y.S. 2d 423 (appeal dismissed 1951, 107 N.Y.S. 2d 565) quoted from the opinion of the Attorney General of New York, as follows:

> "That under Section 90 of the Vehicle and Traffic Law a municipality might lawfully designate highways from which such heavy trucks should be excluded, but in such cases a village *has the duty to provide an alternate route which was adequate, safe and suitable,* or otherwise it would be within the power of the village to bar such traffic entirely."

In *Commonwealth v. Kennedy* (1937), 195 Atl. 770, the Court said:

> "Where other *reasonably convenient routes in the city* are available to the traffic thus excluded in the interest of the public safety and welfare, the latter has no just cause for complaint."

The other undisputed facts showing that the ordinance is arbitrary, capricious and unreasonable, are as follows:

> (1) The ordinance compels appellant to travel directly away from the city over a hill outside of the city, the elevation of which is 569 feet above sea level. The road via Redwood City is all down hill. The maximum grade of the road over the hill is 7.15 per cent. After crossing the hill the

road enters another county road, viz., Canada Road. Travelling south on Canada Road that road enters the City of Woodside and proceeds through that city on Canada Road (then a city street of Woodside) to the state highway of Woodside Road in the City of Woodside. It then follows the state highway of Woodside Road to the city limits of the City of Redwood City. The distance from the quarry to the intersection of the city street of Edgewood Road and the state highway of El Camino Real in Redwood City is 10.45 miles, whereas the distance to that point by the route through Redwood City is 2.7 miles.

(2) The cost of transporting rock via the City of Woodside is approximately *three times as great as the cost of transportation via the direct route through Redwood City.*

(3) The hazards of traffic are more than four times as great via the City of Woodside. The hazards are greatly increased by the steep curved road over a high hill, and by the fact that over 5 miles of the route are on state highways. *The hazards are also greatly increased by the fact that the trucks are over three times as long on the road.*

(4) Not any of the 10.45 miles of road via Woodside is maintained by the City of Redwood City. A portion is maintained by the County of San Mateo, a portion by the City of Woodside, and a portion by the State of California.

(5) In order to save the wear and tear on 1.10 miles of a city street and the hazards involved in

travelling that distance on such street, the ordinance throws all of those burdens upon the County of San Mateo, the City of Woodside and the State of California. *Those additional burdens are also thrown on appellant.*

In *Nectow v. City of Cambridge*, 277 U.S. 183, the Supreme Court reversed a decision of the Supreme Judicial Court of Massachusetts which dismissed a bill to compel the issuance of a building permit. The matter involved was a zoning ordinance of the City of Cambridge which by its terms prevented the granting of a permit. The Supreme Court reversed the decision of the Massachusetts Court on the ground that the ordinance as applied to the plaintiff in error deprived him of his property without due process of law in contravention of the Fourteenth Amendment. The land of plaintiff was originally zoned for industrial uses, but the ordinance in question zoned it for residential purposes. The plaintiff maintained that the land had little value for such purposes. *In the instant case the ordinance, by trebling the cost of transportation, very greatly reduced the value of rock at the quarry or made it unsalable, thereby depriving appellant of his livelihood which depended upon his job of hauling such rock.*

Is it not obvious that the federal questions involved in the instant case are just as substantial as the federal questions involved in Nectow v. Cambridge, supra?

In *Skalko v. City of Sunnyvale* (1939), 14 Cal. (2d) 213, the Supreme Court of California, upon the authority of *Nectow v. City of Cambridge, supra*, held

an ordinance of the City of Sunnyvale void as to the plaintiff. The ordinance restricted plaintiff's land to residential uses although it adjoined a cannery. The Court, at page 215, said:

> "But where the exercise of that power (the police power) results in consequences which are oppressive and unreasonable, the courts do not hesitate to protect the rights of property owners against the unlawful interference with their property."

Can it be doubted that the ordinance here in question is much more unreasonable, capricious, arbitrary and oppressive than the ordinances which were under consideration in the two cases last cited?

It is most respectfully submitted that this Court, in granting the motion to dismiss, has entirely disregarded the undisputed facts appearing in the record, and that on the clearest principles of elementary justice, a rehearing should be granted and the motion to dismiss denied.

Dated, May 15, 1958.

Respectfully submitted,

A. NOBLE MCCARTNEY,
Attorney for Appellant and Petitioner.

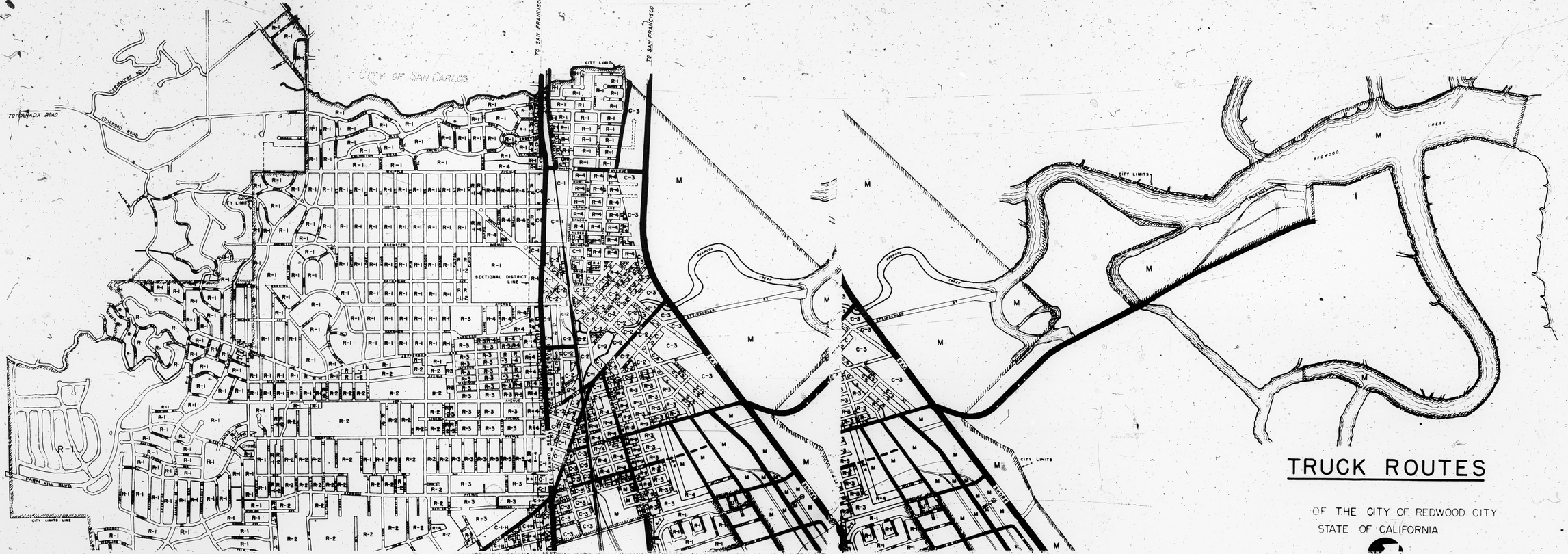
GEORGE H. ECKHARDT, JR.,
ALFRED J. HARWOOD,
Of Counsel.

Certificate of Counsel

The undersigned counsel for appellant hereby certifies that the foregoing petition is presented in good faith and not for delay.

Dated, May 15, 1958.

A. Noble McCartney,
Attorney for Appellant and Petitioner.


CITY OF SAN CARLOS
TO CANADA ROAD
WOODSIDE RD.
REDWOOD ROAD
CITY LIMITS
TO SAN FRANCISCO
R-1 SECTIONAL DISTRICT LINE
FARM HILL BLVD.
CITY LIMIT LINE
REDWOOD CREEK
CITY LIMITS
TRUCK ROUTES
OF THE CITY OF REDWOOD CITY
STATE OF CALIFORNIA
TOWN OF ATHERTON
TO SAN JOSE
CITY OF MENLO PARK
STATE OF CALIFORNIA
SCALE
HARR, WISE & ASSOCIATES — PLANNING CONSULTANTS
LEGEND
R-1 SINGLE FAMILY RESIDENTIAL DISTRICTS
R-2 TWO FAMILY RESIDENTIAL DISTRICTS
R-3 MULTIPLE RESIDENCE DISTRICTS
R-4 MULTIPLE RESIDENTIAL DISTRICTS
C-1 LIMITED COMMERCIAL DISTRICTS
C-2 CENTRAL COMMERCIAL DISTRICTS
C-3 GENERAL COMMERCIAL DISTRICTS
M INDUSTRIAL OR MANUFACTURING DISTRICTS
-H COMBINING DISTRICT
UNLIMITED TRUCK ROUTES
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